PAUL N. TEMPLE

IBLA 81-789, 81-904 Decided November 29, 1982

Appeals from decisions of the Utah State Office, Bureau of Land Management, finding corporate qualifications file to be complete and canceling oil and gas leases in part. U-45955, U-46063, U-46066, U-46180, U-46261, U-46299, and U-46348.

Affirmed in part, vacated in part.

1. Oil and Gas Leases: Cancellation -- Oil and Gas Leases: First-Qualified Applicant -- Oil and Gas Leases: Noncompetitive Leases

   A noncompetitive oil and gas lease for Federal lands may be issued only to the first-qualified applicant, and cancellation is mandatory where an oil and gas lease is issued to a party other than the first-qualified applicant in violation of a statute or regulation of the Department.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: First-Qualified Applicant

   Where a listing of corporate officers is required by regulation as part of the corporate qualifications file maintained by an offeror for an over-the-counter oil and gas lease, the list is deemed complete in the absence of any mention of a corporate treasurer if the corporate president serves in a dual capacity as treasurer and the president's identity is disclosed on the list.

3. Oil and Gas Leases: Applications: Generally

   Reference to the serial number identifying the corporate qualifications file of a corporate offeror for an oil and

gas lease constitutes certification that the qualifications statement complies with 43 CFR 3102.2-1(b) (1980).

4. Administrative Procedure: Hearings -- Rules of Practice: Appeals: Hearings

It is within the discretion of the Board of Land Appeals to grant a request for a hearing on an issue of fact. In order to warrant such a hearing, an appellant must at least allege facts which, if proved, would entitle him to the relief sought.

APPEARANCES: James A. McIntosh, Esq., Salt Lake City, Utah, for appellant; David L. Allin, Vice President, Rocky Mountain Exploration Company.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Paul N. Temple appeals from seven decisions of the Utah State Office, Bureau of Land Management (BLM), dated May 29, July 2, and July 7, 1981, canceling in part oil and gas leases issued to appellant and finding the corporate qualifications file of Rocky Mountain Exploration Company (Rocky Mountain) to be complete.

BLM's finding that the corporate qualifications file of Rocky Mountain was complete as of May 29, 1980, led to its partial cancellation of leases held by appellant, because the over-the-counter offers of appellant and Rocky Mountain described many of the same lands. Rocky Mountain's offers were deemed to be prior to appellant's on the basis of a drawing conducted by BLM to determine the priority of over-the-counter offers filed during the period June 16 through 23, 1980; this unusual procedure was occasioned by the resumption of noncompetitive oil and gas leasing pursuant to Secretarial Order No. 3051. 45 FR 30553 (May 8, 1980).

Although Rocky Mountain received priority over appellant in BLM's drawing, oil and gas leases U-46063, U-46066, U-46180, U-46299, and U-46348 were issued on October 17 and November 20, 1980, to appellant. By decisions of November 24 and 28, 1980, the offers of Rocky Mountain, U-45995 and U-46261, 1/ were rejected in part because the corporate qualifications of Rocky Mountain were found by BLM to be incomplete until July 11, 1980, some 18 days after the close of the June 16 through 23, 1980, filing period. Rocky Mountain appealed; thereafter, by decisions of December 8 and 9, 1980,

1/ The record reveals that Rocky Mountain also filed offer U-46097. No decision rejecting this offer appears in the file. Appellant maintains, however, that lands contained therein conflict with those set forth in his offers. By letter filed with BLM on Oct. 29, 1982, Rocky Mountain withdrew its offers U-46097 and U-46261. The effect of this withdrawal is to require that those decisions of BLM canceling appellant's leases because of their conflict with these two offers be vacated. BLM decision U-46348 is, accordingly, vacated; decision U-46299 is vacated insofar as it canceled appellant's lease in secs. 31 and 33, T. 29 S., R. 15 W, Salt Lake meridian.

BLM sought to rescind its decisions adverse to Rocky Mountain. BLM's December 8 and 9 decisions found the corporate qualifications of Rocky Mountain to be complete as of May 29, 1980, well prior to the June 23, 1980, filing date. See Fred M. Garrett, 66 IBLA 42 (1982). This finding caused BLM to cancel in part the five leases issued earlier to appellant. Temple appealed the five decisions, dated December 9, 1980, canceling portions of his leases.

This Board, by order of January 14, 1981, vacated BLM's decisions of December 8 and 9 which sought to rescind earlier decisions adverse to Rocky Mountain. By order of April 29, 1981, the Board, responding to appellant's motion to remand and consolidate his appeals, vacated the BLM decisions of December 9, 1980, adverse to appellant and remanded the case files; by this order BLM was directed to consolidate its adjudication of Rocky Mountain's offers with Temple's conflicting leases.

On May 29, July 2, and July 7, 1981, BLM issued the decisions which are the focus of this appeal. These decisions canceled in part those leases issued to Paul N. Temple to the extent of their conflict with Rocky Mountain's offers. The basis for these decisions was BLM's conclusion that the qualifications file of Rocky Mountain was complete as of May 29, 1980. We affirm this conclusion.

[1] A noncompetitive oil and gas lease for Federal lands may be issued only to the first-qualified applicant, and cancellation is mandatory where an oil and gas lease is issued to a party other than the first-quali- fied applicant in violation of a statute or regulation of the Department. 30 U.S.C. § 226(c) (1976). Trans-Texas Energy, Inc., 56 IBLA 295 (1981); see Boesche v. Udall, 373 U.S. 472 (1963). Upon BLM's finding that Rocky Mountain's offers were in order as of May 29, 1980, its issuance of a lease to a party other than Rocky Mountain was contrary to 30 U.S.C. § 226(c) (1976).

Appellant maintains that Rocky Mountain is not the first-qualified applicant because its offers were not signed by the proper corporate officers. Appellant points to a corporate resolution, marked exhibit A, in the corporate qualifications file of Rocky Mountain, setting forth those officers authorized to act on behalf of the corporation in matters relating to Federal oil and gas leasing. Exhibit A reads in part:

> RESOLVED, that the President or Vice President and the Secretary or any Assistant Secretary of Rocky Mountain Exploration Company are hereby authorized to submit bids or applications for the Company to the United States of America through its Department of the Interior, Bureau of Land Management * * * for the acquisition of oil and gas leases or interests in oil and gas leases * * * hereby granting to each said officer full authority to act for the Company with respect to bids or applications for or acquiring or releasing oil and gas leases on federal onshore lands * * *.

Appellant reads this resolution as requiring that more than one of the above-named officers sign the subject over-the-counter lease offer. In the instant case, Rocky Mountain's lease offers were signed by only one person,

the company vice president. A careful reading of the resolution in its entirety reveals, however, that although multiple officers are authorized to submit an application for an oil and gas lease, each such officer is granted full authority to act for the company with respect to this application. Our reading of this resolution is consistent with a statement 2/ of the company, dated on the same day, March 17, 1980, as the corporate resolution. This statement provides: "(2) The Corporation is authorized to hold oil and gas leases and each of the following (acting alone) is authorized to act on behalf of the Corporation with respect to leases granted by the United States of America." (Emphasis added.) Among the names following this statement was that of the vice president. The above statements reveal no error on the part of Rocky Mountain in signing its over-the-counter offers.

[2] Appellant's second argument on appeal is the contention that Rocky Mountain did not submit with its offer a complete list of its corporate officers as required by 43 CFR 3102.2-5 (1981). This regulation provides in part:

> § 3102.2-5 Corporations.
>
> (a) A corporation which seeks to lease shall submit with its offer, or application if leasing is in accordance with Subpart 3112 of this title, a statement showing:
>
> * * * * * * *
>
> (3) A complete list of corporate officers, identifying those authorized to act on behalf of the corporation in matters relating to Federal oil and gas leasing.

Although it is clear that Rocky Mountain did not submit the above- described list with its offers, its offers did refer to the company's corporate qualifications file U-38700. If this file was complete on June 23, 1980, there is no impediment to the issuance of the subject leases to Rocky Mountain. 43 CFR 3102.2-1(c). As of June 23, 1980, the list of corporate officers was to be found in the company's "Statement Relating to Citizenship and Qualification of Corporation," filed with BLM on April 3, 1980. Those officers authorized to act on behalf of Rocky Mountain with respect to leases granted by the United States were named as follows:

> J. Bradford Poynter, President
> David L. Allin, Vice President
> Dennis B. Farrar, Secretary
> Richard Stowers Smith, Assistant Secretary.

2/ This statement is entitled "Statement Relating to Citizenship and Qualification of Corporation," filed pursuant to 43 CFR 3102.4-1 (1979). This regulation was amended effective June 16, 1980, and was designated 43 CFR 3102.2-5 at all relevant times herein. On Feb. 26, 1982, the Department published interim final regulations which revised 43 CFR 3102 effectively eliminating the requirement to file the statement of corporate qualifications discussed herein.

Appellant contrasts this list of officers with another list subsequently filed by Rocky Mountain on July 11, 1980. This list named the following as authorized officers:

J. Bradford Poynter	President-Treasurer
David L. Allin	Vice President-Exploration
Dennis B. Farrar	Assistant Secretary
Richard Stowers Smith	Chairman of the Board of Directors and Assistant Secretary [Emphasis supplied.]

Yet another list, filed on August 20, 1982, in response to BLM's inquiry, incorporates page 19 of the company's prospectus:

J. Bradford Poynter * * *	President, Treasurer and Director
David L. Allin * * *	Vice President-Exploration, Secretary and Director
Dennis B. Farrar * * *	Assistant Secretary and Director
* * * * * * *	
Richard Stowers Smith * * *	Chairman of the Board of Directors and Assistant Secretary [Emphasis supplied.]

Thus, in each list of authorized officers, there appear the same four names. The underscored words, however, reveal inconsistencies in the offices held by these individuals. Appellant charges that the failure of Rocky Mountain to list J. Bradford Poynter as treasurer on or before June 23, 1980, rendered its corporate qualifications file incomplete; appellant further contends that Rocky Mountain's inconsistencies in setting forth the offices held by the four named individuals are fatal to its offers.

Whether the above-described defects are sufficient to render Rocky Mountain's corporate qualifications file incomplete requires that we examine the purpose of 43 CFR 3102.2-5(a)(3). In Adobe Oil and Gas Corp., 63 IBLA 106 (1982), this Board held that the purpose of requiring the disclosure of all corporate officers was to permit BLM to identify those situations where corporate officers and the corporation may have engaged in a multiple filing contrary to the regulations. This holding is supported by the preamble to the proposed revision of 43 CFR Part 3100, 44 FR 56177 (Sept. 28, 1979), which states in part:

> (5) Corporate filers would be required to submit a list of corporate officers so that the Bureau of Land Management can verify that no officer is illegally filing in his own name or on behalf of the corporation.

> Decisions of the Interior Board of Land Appeals have identified illegal multiple filings in situations where a corporation has filed for a parcel in its own name and a corporate officer has filed for that same parcel. This proposed rulemaking would make clear that an illegal interest exists when two or more corporate officers file as part of any relationship by which the corporation will benefit from any lease, if issued, regardless of whether the corporation files in its own name.

The purpose of 43 CFR 3102.2-5(a)(3) is, thus, satisfied by a listing of all corporate officers; this was done in the instant case. Rocky Mountain's inconsistencies in designating the offices held by these individuals does not frustrate the regulation.

A similar conclusion was reached in Frandy, Inc., 69 IBLA 26 (1982), involving the omission of the offices of corporate treasurer and secretary from the corporate qualifications file. We hold, therefore, that as of June 23, 1980, the corporate qualifications file of Rocky Mountain was complete. BLM's decisions of May 29, July 2, and July 7, 1981, correctly canceled in part leases for lands in conflict with Rocky Mountain's offers. See also Wilco Properties, Inc., 68 IBLA 215 (1982); Redwood Empire Land and Royalty Co., 64 IBLA 267 (1982); Impel Energy Corp., 64 IBLA 92 (1982); Hickory Creek Oil Co., 63 IBLA 313 (1982); Redwood Empire Land and Royalty Co., 62 IBLA 296 (1982); Altex Oil Corp., 61 IBLA 270 (1982) (Judge Burski concurring).

Regulation 43 CFR 3102.2-5 further requires:

> (5) The names and addresses of the stockholders holding more than 10 percent of the stock of the corporation.
>
> (b) A separate statement from each stockholder owning or controlling more than 10 percent of the stock of the corporation setting forth the stockholder's citizenship, percentage of corporate stock owned or controlled and compliance with the acreage limitations of §§ 3101.1-5 and 3101.2-4 of this title shall also be filed with the proper Bureau of Land Management office not later than 15 days after the filing of an offer, or application if leasing is in accordance with Subpart 3112 of this title.

Contrary to appellant's contention, Rocky Mountain satisfied the terms of the above regulations prior to its filing of over-the-counter offers. At the time of its offers, separate statements from David Allin (19 percent), Larry E. Clark (23.8 percent), Richard Stowers Smith (30 percent), and American Exploration Company (American) (15 percent) were on file with BLM, although received in piecemeal fashion. Appellant is unable to point to a single stockholder owning or controlling more than a 10 percent interest as of June 23, 1980, for whom an appropriate statement was not filed.

[3] Appellant makes much of the fact that certain statements filed by Allin and Clark pursuant to 43 CFR 3102.2-5(a)(5) are undated (although showing BLM's date stamp). Appellant argues that 43 CFR 3102.2-1(b) requires a

certification of such statements and maintains that certification is incomplete without a date. Assuming, arguendo, that 43 CFR 3102.2-1(b) requires certification of such statements, 43 CFR 3102.2-1(c) provides that an offeror's reference to the serial number assigned by BLM to its corporate qualifications file shall constitute certification that the statement complies with subsection 3102.2-1(b). Thus, it appears that certification was complete by Rocky Mountain's reference to its corporate qualifications file U-38700 on the face of its offers. BLM's acceptance of these qualifications was indicated by its assignment of a serial number to the corporate file and by a letter of acceptance dated June 2, 1980. 43 CFR 3102.2-1(c).

By letter of April 16, 1980, the Utah State Office required American, named as a shareholder of Rocky Mountain with an interest exceeding 10 percent, to submit its corporate qualifications. Although no regulation required a corporate stockholder (such as American) to file a corporate statement, the State Office required such as a matter of office policy because American would hold "an indirect interest" in any lease awarded to Rocky Mountain. American responded by filing a qualifications statement omitting mention of a corporate treasurer and leaving undated certain statements of its shareholders with an interest greater than 10 percent.

Appellant once again contends that such defects deprive Rocky Mountain of the status of first-qualified applicant. No mention is made by appellant of the identity of the corporate treasurer or whether, as in Rocky Mountain's case, this office is held by a named individual serving in a dual capacity. Assuming, arguendo, that the name of the individual serving as corporate treasurer did not appear anywhere on American's corporate qualifications papers, this is not such an error as to render incomplete the corporate qualifications of Rocky Mountain. Upon consideration of the purpose of 43 CFR 3102.2-5(a)(3), discussed supra, it is apparent that even the most complete listing of American's corporate officers will not advance the purpose of this regulation. In the absence of an offer by American, a list of its corporate officers is immaterial to the validity of any offer filed by Rocky Mountain.

The corporate qualifications file of American reveals two shareholders with an interest exceeding 10 percent in the company. Statements by these shareholders setting forth their citizenship, percentage of stock owned or controlled, and their compliance with Federal acreage limitations are undated. Appellant renews its argument, set forth above, that certification of these statements is necessary to render Rocky Mountain's qualifications file complete. Our response to this argument is similar to that discussed earlier. By referring to its corporate qualifications serial number on the face of its offers, Rocky Mountain certified that its corporate statement, including those statements of its major stockholders as to citizenship, percentage of stock owned or controlled, and compliance with Federal acreage limitations, complied with subsection 3102.2-1(b). Where, as here, one of Rocky Mountain's major stockholders is a corporation (American), similar information from American's major stockholders is necessary to avoid frustration of the purpose of subsections 3102.2-5(a)(5) and 3102.2-5(b). The purpose of these subsections is to inform BLM of the acreage amount that will be charged to a major stockholder of a corporation. 45 FR 35156, 35158 (May 23, 1980). See also 43 CFR 3101.1-5(d) for computation of this amount. This information is important because, by the terms of 30 U.S.C.A. § 184(d)(1) (West 1982), no person,

association, or corporation shall hold, own, or control at one time oil or gas leases on land exceeding 246,080 acres in any one state other than Alaska. BLM's request for information from American's major stockholders as to their citizenship, percentage of stock owned or controlled, and Federal acreage compliance was a proper request consistent with the regulatory purpose. The undated responses of American's two major stockholders are properly placed in Rocky Mountain's corporate qualifications file. Rocky Mountain's reference to its corporate qualifications serial number constituted certification of these undated statements.

[4] Finally, appellant requests a hearing to inquire whether a letter to BLM from Rocky Mountain, dated November 19, 1980, was promptly filed as an amendment to Rocky Mountain's corporate qualifications file. This letter informed BLM that Rocky Mountain had been "taken public" on June 19, 1980, and that after that date, only Richard Stowers Smith held an interest exceeding 10 percent in the company. Regulation 43 CFR 3102.2-1(c) requires that amendments to a statement of qualifications shall be filed promptly and the serial number shall not be used if the statement on file is not current.

It is within the discretion of the Board to grant a request for a hearing on a question of fact. 43 CFR 4.415. In order to warrant such a hearing, an appellant must at lease allege facts which, if proved, would entitle him to the relief sought. Appellant is unable to allege a failure by Rocky Mountain to act promptly. Instead, it appears to view a hearing as a discovery device to inquire into the matter. This is decidedly not its purpose; appellant's request for a hearing is properly denied. Sun Studs, Inc., 27 IBLA 278 (1976).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions approving Rocky Mountain's qualifications in U-45995 and canceling appellant's leases in U-46063, U-46066, and U-46180 are affirmed; the decision canceling lease U-46348 is vacated; and the decision canceling lease U-46299 is affirmed in part and vacated in part.

Anne Poindexter Lewis
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge